

DOCKET NO: 231062US0

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
Guillaume CASSIN : EXAMINER: CRUZ, KATHRIEN ANN
SERIAL NO: 10/698,403 :
FILED: NOVEMBER 3, 2003 : GROUP ART UNIT: 1628
FOR: SILICA/ALUMINA COMPOSITE :
FILLER USEFUL FOR
MATTIFYING SKIN

APPEAL BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Appellant submits this brief in response to the Rejection dated August 5, 2010.

REAL PARTY IN INTEREST

The real party in interest herein is L'Oréal S.A. of Paris, France.

RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge, there are no appeals or interferences which will directly affect or be directly affected by, or have a bearing on, the Board's decision in this appeal.

STATUS OF CLAIMS

Claims 1-20 are rejected and on appeal.

STATUS OF AMENDMENTS

All amendments and remarks filed in this case have been entered and considered.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1: The invention relates to a process for treating greasy skin consisting of,
(specification, page 6, lines 18-19),

topically applying to greasy skin a composition comprising, in a physiologically acceptable medium, a dispersion of colloidal particles of at least one silica/alumina composite filler and at least one thickening hydrocolloid, (specification, page 6, lines 20-24),

wherein the thickening hydrocolloid is selected from the group consisting of:
carboxyvinyl polymers; modified carboxyvinyl polymers; polyacrylates; polymethacrylates;
polyacrylamides; polymers and copolymers of 2-acrylamido-2-methylpropanesulphonic acid
which are optionally crosslinked and/or neutralized and/or rendered hydrophobic by grafting;
crosslinked anionic copolymers of acrylamide and of 2-acrylamido-2-
methylpropanesulphonic acid; polysaccharide biopolymers, and mixtures thereof.
(Specification, page 6, line 25 through page 7, line 6).

Claim 20: The invention relates to a process for mattifying skin consisting of,
(specification, page 6, lines 12-13),

applying to skin to be mattified a mattifying-effective amount of a dispersion of
colloidal particles of silica/alumina composite filler in a composition suitable for topical
application to the skin. (Specification, page 6, lines 14-17).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-20 are obvious under 35 U.S.C. § 103 over U.S. patent 5,587,170 ("Caisey") in view of U.S. patent 3,819,825 ("Goodwin") and further in view of U.S. patent 2,892,797 ("Alexander").

ARGUMENT

Claims 1-20 are not obvious over Caisey, Goodwin and Alexander.

The Examiner rejected claims 1-20 under 35 U.S.C. § 103 as obvious over Caisey in view of Goodwin and further in view of Alexander. However, no *prima facie* case of obviousness has been established. Accordingly, the rejection should be reversed.

The invention methods of claims 1-19 require treating greasy skin with a composition containing a silica/alumina composite and a thickening hydrocolloid.

These invention methods treat greasy skin by simply applying a composition containing the required ingredients to skin -- that is, the invention methods "consist of" applying the composition to skin. No further action (such as removing the composition) is required.

The Examiner recognized that the primary reference Caisey neither teaches nor suggests treating greasy skin, the required silica/alumina composite, or the required thickening hydrocolloid. (Office Action at 9). Thus, the primary reference is completely irrelevant to these invention methods.

Goodwin also fails to teach or suggest the invention methods. Goodwin requires formation of a white film on skin, followed by rinsing, to treat greasy skin. (See, col. 2, line

1 et seq.). Such a multi-step process is significantly longer and more cumbersome than the simple application involved in the invention methods and, in fact, teaches away from the claimed “consisting of” methods.

Further, the fact that Goodwin teaches a composition which forms a white film on skin which must be removed demonstrates that Goodwin’s compositions, and the ingredients therein, are completely different from the “leave-on” compositions used in the invention methods. In this regard, Appellant notes that Goodwin corresponds to FR 2,167,931 discussed at pages 5 and 6 of the present application. As discussed in the present application, Goodwin fails to disclose the required thickening hydrocolloid, so it would not lead one of ordinary skill in the art to believe that stable compositions containing both the required silica/alumina particles and the required hydrocolloid could be prepared, let alone used to treat greasy skin.

Alexander does not teach or suggest treating greasy skin.

Thus, none of the asserted art teaches or suggests treating greasy skin by simply applying a composition to skin, let alone a composition having both the required silica/alumina particles and the required hydrocolloid to skin. Accordingly, the asserted art does not teach or suggest each and every element of the invention methods of claims 1-19. No *prima facie* case of obviousness has been set forth.

The invention method of claim 20 requires mattifying skin by applying a mattifying-effective amount of a dispersion of colloidal particles of silica/alumina composite filler in a composition suitable for topical application to the skin. This invention method mattifies skin by simply applying a composition containing the required ingredients to skin -- that is, the invention methods “consist of” applying the composition to skin. No further action (such as removing the composition) is required.

As explained above, the applied art does not teach or suggest a “leave on” composition, so the applied art cannot teach or suggest the invention method of claim 20 which “consists of” applying a composition to skin to be mattified.

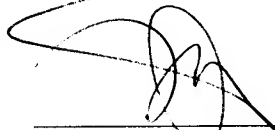
For all of the above reasons, Appellants respectfully request reversal of the obviousness rejection.

CONCLUSION

In view of the above remarks and reasons explaining the patentable distinctness of the presently appealed claims over the applied art, Appellant requests that the Examiner’s rejection be REVERSED.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Richard L. Treanor
Attorney of Record
Registration No. 36,379

Jeffrey B. McIntyre
Registration No. 36,867

Customer Number

22850

Tel #: (703) 413-3000
Fax #: (703) 413-2220

APPENDIX I (CLAIMS)

1. (Previously Presented): A process for the treatment of greasy skin consisting of topically applying to greasy skin a composition comprising, in a physiologically acceptable medium, a dispersion of colloidal particles of at least one silica/alumina composite filler and at least one thickening hydrocolloid, wherein the thickening hydrocolloid is selected from the group consisting of: carboxyvinyl polymers; modified carboxyvinyl polymers; polyacrylates; polymethacrylates; polyacrylamides; polymers and copolymers of 2-acrylamido-2-methylpropanesulphonic acid which are optionally crosslinked and/or neutralized and/or rendered hydrophobic by grafting; crosslinked anionic copolymers of acrylamide and of 2-acrylamido-2-methylpropanesulphonic acid; polysaccharide biopolymers, and mixtures thereof.

2. (Original): The process according to claim 1, wherein the particles have a number-average diameter of 5-30 nm.

3. (Original): The process according to claim 2, wherein the particles have a number-average diameter of 10-15 nm.

4. (Original): The process according to claim 1, wherein the particles are core/shell particles with a silica core, and wherein 4-6% of the surface area of the core is covered with aluminium.

5. (Original): The process according to claim 1, wherein the particles have a zeta

potential of less than -25 mV at pH 7 and at 25° C.

6. (Original): The process according to claim 1, wherein the composition has a pH of less than 7.

7. (Original): The process according to claim 1, wherein the composition has a pH of less than 6.

8. (Original): The process according to claim 1, wherein said composition comprises at least one polysaccharide biopolymer selected from the group consisting of xanthan gum, guar gum, locust bean gum, acacia gum, scleroglucans, chitin and chitosan derivatives, carrageenans, gellans, alginates and celluloses.

9. (Original): The process according to claim 1, wherein said composition comprises at least one polysaccharide biopolymer selected from the group consisting of microcrystalline cellulose, carboxymethylcellulose, hydroxymethylcellulose and hydroxypropylcellulose.

10. (Original): The process according to claim 1, wherein the composition is in the form of an oil-in-water emulsion.

11. (Original): The process according to claim 2, wherein the composition is in the form of an oil-in-water emulsion.

12. (Original): The process according to claim 3, wherein the composition is in the form of an oil-in-water emulsion.

13. (Original): The process according to claim 4, wherein the composition is in the form of an oil-in-water emulsion.

14. (Original): The process according to claim 8, wherein the composition is in the form of an oil-in-water emulsion.

15. (Original): The process according to claim 1, wherein the composition is in the form of an aqueous gel.

16. (Original): The process according to claim 2, wherein the composition is in the form of an aqueous gel.

17. (Original): The process according to claim 3, wherein the composition is in the form of an aqueous gel.

18. (Original): The process according to claim 8, wherein the composition is in the form of an aqueous gel.

19. (Original): The process according to claim 1, wherein the composition comprises 0.1-5% by weight of colloidal particles of silica/alumina composite filler.

20. (Previously Presented): A process for mattifying skin, consisting of applying to skin to be mattified a mattifying-effective amount of a dispersion of colloidal particles of silica/alumina composite filler in a composition suitable for topical application to the skin.

APPENDIX II (EVIDENCE)

None.

APPENDIX III
(RELATED PROCEEDINGS APPENDIX)

None.